IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.334 OF 2004

Food Corporation of India ... Petitioners

v/s

M/s Chandu Constructions and anr. ... Respondents

Mr P. Rajgopal i/b Mrs Rekha Rajgopal for Petitioners.

Mr R.A. Kapadia i/b Mr Amit Sheth for Respondents.

CORAM : D.K.DESHMUKH J.

DATE : 14TH MARCH 2005

P.C.: -

1. By this petition, the petitioners challenge the award made by the Arbitrator. The only point on which the award is challenged is that in the quotation, the respondents had indicated the rate at Rs.18.05 per cubic meter for sand. It is submitted that as per clause 2.9.4 of the contract, the rated included the cost of materials and labour. According to the petitioners, in the absence of any correspondence between the parties, the Arbitrator has committed an error in arriving at the conclusion that the rate that was quoted by the respondents was the rate only for labour and did not include the cost of materials. After having heard learned counsel for the petitioners, I find that the respondents had produced evidence before the Arbitrator that the rate that was quoted by them, could be taken as the rate only for labour and not the price of the materials. The respondents had produced before the Arbitrator material to show the rate at which Public Works Department, at the relevant time, was purchasing the sand. The respondents had also produced material before the Arbitrator by way of rate quoted by other contractor in some other work to disprove the claim. Thus, I find that the Arbitrator in fact found that the

rate quoted by the contractor did not include the price of materials and therefore, the Arbitrator, on the basis of material produced on record, concluded as to what would be the price of materials existing at the relevant time and made the award. Merely because there was no correspondence between the parties where the contractor saysthat the rate quoted by him does not include the price of materials, will not vitiate the award. I find that there is definite material available on record supporting the finding recorded by the Arbitrator. Therefore, I see no error in the award passed by the Arbitrator. Petition is disposed off.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary as true copy.

. Certified copy expedited.